

The Hon. Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL SCOTT MORGAN, JR.,

Defendant,

and,

KIMBERLY GUADALUPE,

Third-Party Petitioner.

No. CR18-132-RAJ

**STIPULATED PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in the ancillary proceeding concerning the petition of Third-Party Petitioner Kimberly Guadalupe to preliminarily forfeited property is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the United States and Petitioner Guadalupe (hereinafter, the “parties”), hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information

1 or items that are entitled to confidential treatment under the applicable legal principles, and it
 2 does not presumptively entitle parties to file confidential information under seal.

3 2. “CONFIDENTIAL” MATERIAL

4 “Confidential” material shall include the following documents and tangible things
 5 produced or otherwise exchanged:

6 (a) Any materials designated as “Protected Materials” in the Stipulated Protective
 7 Order the Court entered on October 10, 2018 (W.D. Wash. CR18-132, Dkt. No. 266), which
 8 included the following: (1) Grand Jury testimony; (2) wiretap materials (including wiretap
 9 pleadings, already under seal by prior order of the Court); (2) financial information,
 10 subscriber information (including phone and utility subscriber information for third parties)
 11 and other personal identifying information (“PII”)¹ obtained during the investigation, either
 12 via Grand Jury subpoena and/or during the execution of search warrants; (3) other personal
 13 information about defendants and third parties, including but not limited to photographs
 14 (including sexually suggestive photographs of family members, defendants and/or witnesses)
 15 and other sensitive information obtained from the search of social media, cellular telephones
 16 and other digital devices seized during the investigation; and

17 (b) Law enforcement-sensitive information, including records from the
 18 investigative files of federal agencies relating to the criminal investigation described in the
 19 Superseding Information filed against Defendant Michael Scott Morgan, Jr. (W.D. Wash.
 20 CR18-132, Dkt. No. 544).

21 3. SCOPE

22 The protections conferred by this agreement cover not only confidential material (as
 23 defined above), but also (1) any information copied or extracted from confidential material;
 24 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any
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 27 ¹ “PII” includes, but is not necessarily limited to, the information identified in Fed. R. Crim. P. 49.1(a) and
 28 includes full names, dates of birth, Social Security numbers (or other identification information), financial
 29 account information (including account numbers), tax information, driver’s license numbers, addresses,
 telephone numbers, locations of residences or employment, medical records, school records, juvenile criminal
 records, and other confidential information.

1 testimony, conversations, or presentations by parties or their counsel that might reveal
 2 confidential material. However, the protections conferred by this agreement do not cover
 3 information that is in the public domain or becomes part of the public domain through trial or
 4 otherwise.

5 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

6 4.1 Basic Principles. A receiving party may use confidential material that is
 7 disclosed or produced by another party or by a non-party in connection with this ancillary
 8 proceeding only for prosecuting, defending, or attempting to settle this litigation.
 9 Confidential material may be disclosed only to the categories of persons and under the
 10 conditions described in this agreement. Confidential material must be stored and maintained
 11 by a receiving party at a location and in a secure manner that ensures that access is limited to
 12 the persons authorized under this agreement.

13 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 14 ordered by the court or permitted in writing by the designating party, a receiving party may
 15 disclose any confidential material only to:

16 (a) the receiving party's counsel of record in this action, as well as
 17 employees of counsel to whom it is reasonably necessary to disclose the information for this
 18 litigation;

19 (b) the officers, directors, and employees (including agency counsel and in
 20 house counsel) of the receiving party to whom disclosure is reasonably necessary for this
 21 litigation, unless the parties agree that a particular document or material produced is for
 22 Attorney's Eyes Only and is so designated;

23 (c) experts and consultants to whom disclosure is reasonably necessary for
 24 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
 25 (Exhibit A);

26 (d) the court, court personnel, and court reporters and their staff;

27 (e) copy or imaging services retained by counsel to assist in the duplication
 28 of confidential material, provided that counsel for the party retaining the copy or imaging
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1 service instructs the service not to disclose any confidential material to third parties and to
2 immediately return all originals and copies of any confidential material;

3 (f) during their depositions, witnesses in the action to whom disclosure is
4 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be
5 Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the
6 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
7 confidential material must be separately bound by the court reporter and may not be
8 disclosed to anyone except as permitted under this agreement;

9 (g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information.

11 4.3 Filing Confidential Material. Before filing confidential material or discussing
12 or referencing such material in court filings, the filing party shall confer with the designating
13 party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating
14 party will remove the confidential designation, whether the document can be redacted, or
15 whether a motion to seal or stipulation and proposed order is warranted. During the meet and
16 confer process, the designating party must identify the basis for sealing the specific
17 confidential information at issue, and the filing party shall include this basis in its motion to
18 seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets
19 forth the procedures that must be followed and the standards that will be applied when a
20 party seeks permission from the court to file material under seal. A party who seeks to
21 maintain the confidentiality of its information must satisfy the requirements of Local Civil
22 Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this
23 requirement will result in the motion to seal being denied, in accordance with the strong
24 presumption of public access to the Court’s files.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
27 party or non-party that designates information or items for protection under this agreement
28 must take care to limit any such designation to specific material that qualifies under the
29 appropriate standards. The designating party must designate for protection only those parts

1 of material, documents, items, or oral or written communications that qualify, so that other
2 portions of the material, documents, items, or communications for which protection is not
3 warranted are not swept unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
5 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
6 unnecessarily encumber or delay the case development process or to impose unnecessary
7 expenses and burdens on other parties) expose the designating party to sanctions.

8 If it comes to a designating party's attention that information or items that it
9 designated for protection do not qualify for protection, the designating party must promptly
10 notify all other parties that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this
12 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
13 ordered, disclosure or discovery material that qualifies for protection under this agreement
14 must be clearly so designated before or when the material is disclosed or produced.

15 (a) Information in documentary form: (*e.g.*, paper or electronic documents
16 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
17 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page
18 that contains confidential material. If only a portion or portions of the material on a page
19 qualifies for protection, the producing party also must clearly identify the protected
20 portion(s) (*e.g.*, by making appropriate markings in the margins).

21 (b) Testimony given in deposition or in other pretrial proceedings: the
22 parties and any participating non-parties must identify on the record, during the deposition or
23 other pretrial proceeding, all protected testimony, without prejudice to their right to so
24 designate other testimony after reviewing the transcript. Any party or non-party may, within
25 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,
26 designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-
27 party desires to protect confidential information at trial, the issue should be addressed during
28 the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party’s right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and

1 burdens on other parties) may expose the challenging party to sanctions. All parties shall
 2 continue to maintain the material in question as confidential until the court rules on the
 3 challenge.

4 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 5 OTHER LITIGATION

6 If a party is served with a subpoena or a court order issued in other litigation that
 7 compels disclosure of any information or items designated in this action as
 8 “CONFIDENTIAL,” that party must:

9 (a) promptly notify the designating party in writing and include a copy of the
 10 subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to issue
 12 in the other litigation that some or all of the material covered by the subpoena or order is
 13 subject to this agreement. Such notification shall include a copy of this agreement; and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 15 designating party whose confidential material may be affected.

16 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
 18 confidential material to any person or in any circumstance not authorized under this
 19 agreement, the receiving party must immediately (a) notify in writing the designating party
 20 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of
 21 the protected material, (c) inform the person or persons to whom unauthorized disclosures
 22 were made of all the terms of this agreement, and (d) request that such person or persons
 23 execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as
 24 Exhibit A.

25 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 26 PROTECTED MATERIAL

27 When a producing party gives notice to receiving parties that certain inadvertently
 28 produced material is subject to a claim of privilege or other protection, the obligations of the
 29 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This

1 provision is not intended to modify whatever procedure may be established in an e-discovery
2 order or agreement that provides for production without prior privilege review. The parties
3 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

4 10. NON TERMINATION AND RETURN OF DOCUMENTS

5 Within 60 days after the termination of this ancillary proceeding, including all
6 appeals, each receiving party must return all confidential material to the producing party,
7 including all copies, extracts and summaries thereof. Alternatively, the parties may agree
8 upon appropriate methods of destruction.

9 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
10 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
11 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
12 work product, even if such materials contain confidential material.

13 The confidentiality obligations imposed by this agreement shall remain in effect until
14 a designating party agrees otherwise in writing or a court orders otherwise.

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: April 21, 2020

/s/ Neal B. Christiansen

NEAL B. CHRISTIANSEN
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DATED: April 21, 2020

/s/ Derek M. Smith *

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Attorney for Petitioner
** permission to e-sign and e-file obtained
via email on April 21, 2020*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
3 any documents in this proceeding shall not, for the purposes of this proceeding or any other
4 federal or state proceeding, constitute a waiver by the producing party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-product
6 protection, or any other privilege or protection recognized by law.

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8 DATED this 22nd day of April, 2020.

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11 The Honorable Richard A. Jones
12 United States District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Western District of
Washington on April 22, 2020, in the case of *United States v. Morgan, et al.* (CR18-132-
RAJ). I agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will not
disclose in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____